



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**April 27, 2021 Government Records Council Meeting**

Hai Kim Nguyen  
Complainant

Complaint No. 2020-61

v.

NJ Department of Corrections  
Custodian of Record

At the April 27, 2021 public meeting, the Government Records Council (“Council”) considered the April 20, 2021 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that because N.J.A.C. 10A:22-2.3(a)(6) provides that criminal history records are exempt from disclosure, and because said this regulation is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), the Custodian lawfully denied the Complainant access to the requested criminal record history. N.J.S.A. 47:1A-6.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 27<sup>th</sup> Day of April 2021

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: April 29, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 27, 2021 Council Meeting**

**Hai Kim Nguyen<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-61**

v.

**N.J. Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopy via U.S. mail of the Complainant’s criminal history from the National Crimes Information Center (“NCIC”).

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** February 24, 2020  
**Response Made by Custodian:** February 25, 2020  
**GRC Complaint Received:** March 10, 2020

**Background<sup>3</sup>**

**Request and Response:**

On February 7, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 25, 2021, the Custodian responded in writing denying the Complainant’s OPRA request under N.J.A.C. 10A:22-2.3(a)(6).

**Denial of Access Complaint:**

On March 10, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he was “[d]enied” access to the requested records but did not provide any argument or support for why he believed he was unlawfully denied access to the records.

**Statement of Information:**

On June 12, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Deputy Attorney General Chanell M. Branch.

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

certified that he received the Complainant's OPRA request on February 24, 2020. The Custodian certified that he responded in writing on February 25, 2020 denying the Complainant's OPRA request based on the New Jersey Department of Corrections' ("DOC") regulations. N.J.A.C. 10A:22-2.3(a)(6).

The Custodian stated that DOC's regulations expressly exempt access to "[c]omprehensive criminal history information (rap sheet)." N.J.A.C. 10A:22-2.3(a)(6). The Custodian argued that he lawfully denied access to the Complainant's OPRA request based on a plain reading of N.J.A.C. 10A:22-2.3(a)(6). The Custodian thus argued that this complaint should be dismissed because the requested record is exempt from disclosure under OPRA.

### Analysis

#### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

Regarding criminal history background information, colloquially known as criminal "rap sheets," OPRA provides that it "shall not abrogate any exemption . . . made pursuant to . . . any . . . Executive Order of the Governor . . ." N.J.S.A. 47:1A-9(a). To this end, Executive Order No. 9 (Gov. Hughes, 1963) ("EO 9") provides that "criminal records required to be made, maintained[,] and kept pursuant to [N.J.S.A. 53:1-20.1] and [N.J.S.A. 53:1-20.2]" are exempt from disclosure. Id. at 2(f). EO 9 is relevant to criminal histories because N.J.S.A. 53:1-20.1 requires this information be collected and submitted into the criminal history background check database through the SBI. Additionally, N.J.S.A. 53:1-20.2 provides that bureaus of identification are established in "the office of the sheriff and . . . prosecutors . . ." Id. Thus, it follows that any information coalesced by county and State SBIs are exempt from access under OPRA in accordance with N.J.S.A. 47:1A-9(a) and EO 9.

In keeping with the confidential nature of criminal history sheet information, DOC's regulations provide that:

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq. . . . the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq. . . . (6) Comprehensive criminal history information (rap sheet). . .

[N.J.A.C. 10A:22-2.3(a)(6).]

In the matter before the Council, the Complainant sought access to his criminal history record. The Custodian responded denying access to the OPRA request based on a plain reading of N.J.A.C. 10A:22-2.3. Following the filing of this complaint, the Custodian maintained in the SOI

that he lawfully denied to the requested record based on DOC's regulations. The GRC agrees: N.J.A.C. 10A:22-2.3(a)(6) expressly provides that criminal history records are exempt from disclosure under OPRA. Further, there are no exceptions included that would allow access in certain circumstances, such as an individual seeking their own criminal history record. For these reasons, the denial of access at issue here is lawful.

Accordingly, because N.J.A.C. 10A:22-2.3(a)(6) provides that criminal history records are exempt from disclosure, and because said this regulation is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), the Custodian lawfully denied the Complainant access to the requested criminal record history. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because N.J.A.C. 10A:22-2.3(a)(6) provides that criminal history records are exempt from disclosure, and because said this regulation is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), the Custodian lawfully denied the Complainant access to the requested criminal record history. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

April 20, 2021